

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CRIMINAL NO. 1:07CR115

UNITED STATES OF AMERICA)
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)
)
VS.)
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)
CHRISTOPHER EUGENE HARRIS)
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)

ORDER

THIS MATTER is before the Court on Defendant's "Motion pursuant to Specific Performance of a Plea Agreement to Respond and File a Promised Rule 35(b) Motion which was Included in Plea[;] Government has Acted in Bad Faith by not Fulfilling its end of the Bargain, thus Breaching Plea Agreement," filed August 17, 2009.

The Defendant asks the Court to order the Government to file response to this motion, and if the Court finds the Government has acted in bad faith, he requests the Court grant a downward departure on its own motion. The motion is denied.

Defendant's plea agreement contains the standard language used in all plea agreements filed in this District; the Government agreed to

recommend a two-level reduction in offense level pursuant to U.S.S.G. § 3E1.1(a); if the Defendant provided timely information concerning his involvement in the crimes charged in the indictment, the Government agreed to recommend an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b); and the Government “*in its sole discretion, will determine whether said assistance has been substantial.*” **Plea Agreement, filed February 21, 2008, ¶¶ 7b, 24a (emphasis added).** No where in the agreement is there any mention that the Government agreed to file a Rule 35 motion for the Defendant.

This issue was addressed in Defendant’s direct appeal to the Fourth Circuit where he argued that the Government’s failure to file a motion for downward departure amounted to prosecutorial misconduct. **See United States v. Harris, 2009 WL 1324741 (4th Cir. 2009).** The Fourth Circuit disagreed and affirmed his conviction and sentence. ***Id.* (“We have reviewed the record and find Harris’ claims to be without merit.”).** Likewise, this Court has reviewed the Defendant’s instant motion and finds that the claims therein are without merit.

IT IS, THEREFORE, ORDERED that the Defendant’s “motion for specific performance” is hereby **DENIED**.

Signed: August 27, 2009



Lacy H. Thornburg
United States District Judge

